

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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GENCO IMPORTING INC., etc.,

Plaintiff,

-against-

07 Civ. 3560 (LAK)

CITY OF NEW YORK, et al.,

Defendants.  
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### ORDER

LEWIS A. KAPLAN, *District Judge*.

The parties are invited to address, in addition to such other matters as they wish to raise, the following questions at oral argument:


1. Could all of plaintiff's "as applied" challenges to the relevant provisions of the Administrative Code be raised in an Article 78 proceeding seeking review of any determination imposing a civil penalty for violation thereof? *See, e.g., Matter of Kovarsky v. Housing and Development Administration*, 31 N.Y.2d 184, 335 N.Y.S.2d 383 (1972).

2. Could all of plaintiff's facial challenges to the relevant provisions of the Administrative Code be raised in an Article 78 proceeding seeking review of any determination imposing a civil penalty for violation thereof by treating so much of the petition as sought Article 78 review as a complaint for a declaration that the relevant provisions are unconstitutional on their face? *See, e.g., Kirschner v. Klemons*, 225 F.3d 227, 235 (2d Cir. 2000); *Ellentuck v. Klein*, 570 F.2d 414, 423 (2d Cir. 1978); *Matter of Kovarsky, supra*.

3. To whatever extent plaintiff could raise its constitutional challenges to the relevant provisions of the Administrative Code in an Article 78 proceeding, whether directly or by treating the petition in part as a complaint for a declaratory judgment, should this Court abstain from ruling on the constitutional questions? *See, e.g., Middlesex County Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 601-02 (1975); *Gentner v. Shulman*, 55 F.3d 87, 89-90 (2d Cir. 1995).

SO ORDERED.

Dated: November 5, 2007



Lewis A. Kaplan  
United States District Judge